STATE OF MICHIGAN

COURT OF APPEALS

TURKIA MULLEN, Plaintiff-Appellant,	UNPUBLISHED October 23, 2014
v	No. 316792 Wayne Circuit Court
COUNTY OF WAYNE, Defendant-Appellee.	LC No. 12-006451-CZ

Before: CAVANAGH, P.J., and JANSEN and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendant in this dispute involving eligibility for post-separation employment benefits. We affirm.

Plaintiff worked for defendant from September 8, 2003 through September 2, 2011, and during her employment she was appointed Director of the Economic and Neighborhood Development Department. Thereafter, plaintiff accepted a position with the Wayne County Airport Authority. After her employment with the Airport Authority ended, plaintiff applied for health care and life insurance benefits pursuant to Wayne County Resolution No. 94-903. This Resolution provided that persons who had served the county in one of the specified positions and separated from the county "with at least a total of eight years of County service" were entitled to health care and life insurance benefits. After defendant denied plaintiff's claim for benefits on the ground that she had not provided the requisite eight years of County service, plaintiff filed this complaint for damages and declaratory relief.

Shortly thereafter, plaintiff filed a motion for summary disposition and entry of declaratory judgment pursuant to MCR 2.116(C)(10) and MCR 2.605(a). Plaintiff argued that she met the service length requirement of Resolution No. 94-903 because Wayne County Retirement Ordinance No. 141-5 provided that (1) service credits are calculated "to the nearest 1/12 year," and (2) a member who rendered ten or more days of service in a month is credited with service for that month. Because she worked more than ten days in September 2003, plaintiff argued, she must be credited with service for that month. And because she worked for the Airport Authority from September 4, 2011 to October 30, 2011, she must be credited with an additional two months' service credit for that time period. Accordingly, plaintiff argued, there was no genuine issue of material fact that her application for benefits provided under Resolution No. 94-903 should have been granted.

Defendant responded to plaintiff's motion, arguing that plaintiff's reliance on Ordinance No. 141-5 was misplaced because "County service" under Resolution No. 94-903 is calculated on a calendar year basis and Ordinance No. 141-5 recognizes the fiction of "credited service" for purposes of determining whether the 20-year retirement requirement was met. Defendant argued that the service length requirement set forth in Resolution No. 94-903 was unambiguous and meant "actual time" in service to the County, not "credited time." Because plaintiff served the County for less than eight years, she was not entitled to benefits under Resolution No. 94-903 and defendant was entitled to summary disposition pursuant to MCR 2.116(I)(2).

Plaintiff replied, arguing that the phrase "eight years of County service" was not defined by Resolution No. 94-903 and the method for determining how a year of county service is calculated was also not provided. However, Ordinance No. 141-5 sets forth a method for calculating the length of "County service" and should apply to Resolution No. 94-903. Plaintiff argued that Resolution No. 94-903 and Ordinance No. 141-5 should be considered *in pari materia* because both apply to the issue of retirement benefits and are part of the County's comprehensive retirement system.

After oral arguments on the parties' cross-motions for summary disposition, the trial court ordered the parties to submit supplemental briefs.

In her supplemental brief, plaintiff argued that the method for calculating service length set forth in Ordinance No. 141-5 governed eligibility for benefits under Resolution No. 94-903 because these benefits are part of the County's retirement system and the Retirement Commission administers the benefits. Further, plaintiff argued, after she was hired by the Airport Authority she remained in the Wayne County Employee Retirement System and, therefore, she should be credited with that service time. Although the Airport Authority is a separate legal entity, plaintiff reasoned, the County still owned the Airport Authority and shared key airport-related services. In its supplemental brief, defendant responded that plaintiff's employment with the Airport Authority did not constitute "County service" within the contemplation of Resolution No. 94-903 because employees of the Airport Authority are not "county employees" as explained in *Wayne Co v Wayne Co Retirement Comm*, 267 Mich App 230, 233-234; 704 NW2d 117 (2005).

On June 7, 2013, the trial court issued its opinion and order denying plaintiff's motion for summary disposition and declaratory judgment and granting defendant's motion for summary disposition pursuant to MCR 2.116(I)(2). The court noted that the following underlying facts were not in dispute: (1) plaintiff was hired by defendant on September 8, 2003, (2) plaintiff worked through September 2, 2011 or September 3, 2011, (3) plaintiff applied for benefits under Resolution No. 94-903 which requires "eight years of County service," and (4) plaintiff's application was denied on the ground that she only had seven years, 11 months, and 26 days of County service.

The trial court rejected plaintiff's claim that the method for calculating service length set forth in Ordinance No. 141-5 governed eligibility for benefits under Resolution No. 94-903. The court concluded that the phrase "eight years of County service" was not ambiguous; the term "year" is defined by MCL 8.3j as a "calendar year," or 365 day period, the term "County" clearly referred to "Wayne County," and the dictionary definition of "service" includes "employment in

duties or work for another, esp. for a government." Accordingly, the trial court concluded that the commonly understood meaning of the phrase "eight years of County service" was "eight calendar years (or eight periods of 365 days) of employment with the County." And because plaintiff was not employed with the County for eight calendar years, she did not qualify for benefits under Resolution No. 94-903.

The trial court also rejected plaintiff's claim that the "*in pari materia*" doctrine was applicable because Resolution No. 94-903 was not ambiguous and, in any case, did not address the same subject matter as Ordinance No. 141-5. That is, Resolution No. 94-903 addressed benefits that may be given to a former county employee who did not retire but separated from service, while Ordinance No. 141-5 addressed the calculation of "credited service" for the purpose of applying various sections of the County's retirement ordinance. Further, the court held, a textual examination of Resolution No. 94-903 and Ordinance No. 141-5 did not demonstrate an intention that provisions of the Ordinance be read into the Resolution. The Resolution No. 94-903 specifically requires "eight years of County service," and does not refer to "credited service."

The trial court also rejected plaintiff's claim that her two months' employment with the Airport Authority should be considered in determining whether she had "eight years of County service" required by Resolution No. 94-903. The court noted that the County and the Airport Authority are separate legal entities and the Legislature recognized a distinction between county employees and Airport Authority employees by expressly addressing the rights of former county employees who become employed by the Airport Authority. See MCL 259.119 and *Wayne Co Retirement Comm*, 267 Mich App at 233-234. Therefore, the trial court concluded, plaintiff's employment with the Airport Authority did not constitute "County service" for purposes of determining benefit eligibility under Resolution No. 94-903. Accordingly, the trial court granted defendant's motion for summary disposition with regard to plaintiff's claim under Resolution No. 94-903. This appeal followed.

Plaintiff argues that the trial court erred in granting defendant's motion for summary disposition because she had "eight years of County service" as required by Resolution No. 94-903. We disagree.

We review de novo a trial court's decision on a motion for summary disposition. *Woodman v Kera LLC*, 486 Mich 228, 236; 785 NW2d 1 (2010). A motion under MCR 2.116(C)(10) is properly granted if the evidence fails to establish a genuine issue regarding any material fact. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31; 651 NW2d 188 (2002). If it appears that the opposing party is entitled to judgment, a judgment in favor of the opposing party may be entered. MCR 2.116(I)(2); *Policemen & Firemen Retirement Sys v City of Detroit*, 270 Mich App 74, 77-78; 714 NW2d 658 (2006) (citation omitted). As with issues of statutory interpretation, we review de novo the interpretation of a county resolution. *46th Circuit Trial Court v Crawford Co*, 476 Mich 131, 140; 719 NW2d 553 (2006).

Resolution No. 94-903 provides:

> 2. If a person is separated from the County after January 1, 1994, with at least a total of eight years of County service, and has served as [one of the enumerated

> types of positions] that person shall be entitled to the same insurance and health care benefits for himself or herself, his or her spouse and dependents, as a retiree from the Defined Benefit Plan 1. For the purpose of determining eligibility for this benefit, the Retirement Commission shall recognize up to six months of the required time if a person has worked for the County on a full-time basis on loan from another unit of government or a private employer.

Plaintiff argues that the phrase "eight years of County service" is susceptible to more than one meaning and, thus, is ambiguous because it is not defined. Plaintiff claims that "[a] year of County service can be interpreted in many ways." We cannot agree. A statute is not rendered ambiguous because a term is undefined. *Lash v Traverse City*, 479 Mich 180, 188-189; 735 NW2d 628 (2007). Undefined statutory terms are construed according to their plain and ordinary meaning. *Koontz v Ameritech Servs, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). As the trial court held, the word "year" clearly means a "calendar year," i.e., a 365 day period of time; the term "County" clearly refers to Wayne County; and the term "service" plainly refers to employment with the County. Thus, to be eligible for benefits under Resolution No. 94-903, a person must have been employed by the County for at least eight years at the time of separation from County employment. Plaintiff's claim that the phrase "eight years of County service" could "mean years of service as defined in Ordinance No. 141-5" contravenes the plain language of Resolution No. 94-903 and is unavailing. Thus, we reject plaintiff's arguments that interpretation of the service length requirement set forth in Resolution No. 94-903 may be aided by (1) the *in para materia* doctrine, (2) consideration of the methods for determining credited service set forth in Ordinance No. 141-5, and (3) consideration of the Resolution's preamble. The service length requirement of Resolution No. 94-903 is not ambiguous and, thus, no construction is necessary or permitted; it must be enforced as written. See *In re Receivership of 11910 South Francis Rd*, 492 Mich 208, 222; 821 NW2d 503 (2012); *Koontz*, 466 Mich at 312.

Plaintiff also argues that her employment with the Airport Authority should have been considered in determining whether she met the service length requirement of Resolution No.94-903. However, as the trial court held, the County and the Airport Authority are separate legal entities. Employment by the Airport Authority is not the same as employment by the County and, thus, does not constitute "County service" within the contemplation of Resolution No. 94-903. MCL 259.119(2) illustrates this distinction, stating that "local government employees" could elect to "transfer to the employment of the authority" and, if an employee chose not to transfer to the employment of the authority, the employee "shall be reassigned within the local government." Plaintiff also argues that "the Resolution does not address how defendant must treat post-County government service." But such a consideration is unnecessary. Resolution No. 94-903 clearly provides that entitlement to benefits under Resolution No. 94-903 only arises after "at least a total of eight years of *County* service."

In conclusion, the trial court properly held that plaintiff was not entitled to benefits under Resolution No. 94-903 and, thus, defendant was entitled to summary disposition of plaintiff's claim pursuant to MCR 2.116(I)(2).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Amy Ronayne Krause